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The Bali Roadmap for Global Climate Policy – New Horizons and Old Pitfalls*

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1. Introduction

The international climate negotiations have seen endless conflicts among countries from South and North anxiously trying to safeguard what they defined as their national interest. Thus the conflict between developed and developing countries about who should take action, when, and how much has defined the international climate regime from the outset. This division has, moreover, hampered progress on achieving protection of the global climate - even more than the large transatlantic gap in perception and action concerning climate change.

The year 2007 could mark the beginning of a rapprochement, most notably evidenced in the 13th meeting of the Conference of the Parties and the 3rd meeting of the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol (COP 13 / CMP 3) held in Bali in December 2007. The conference might even be remembered as a watershed in the history of the climate negotiations - not because the Bali conference paved the way for the post-2012 negotiations or because it was bigger than any meeting before, although the almost 11.000 participants that attended COP 13 / CMP 3 certainly established a new record.

The real importance of Bali lies in the fact that many old battlegrounds have been vanquished and that a realignment of forces and positions had taken place when the longest diplomatic battle in the history of the climate negotiations finally came to a close at 6.27 pm on Saturday, 15 December 2007, one full day behind schedule. The Bali conference evidenced a remarkable change of strategy by the developing countries, in particular the emerging economies. They showed an unprecedented dedication to fighting climate change and established themselves as forceful players. They thus managed to break up old and destructive features of climate policy, despite the continuous counter-action of some industrialised and developing countries.

This article will explore the outcomes of the Bali climate conference in some more detail than was previously possible.¹ By doing so, we make the assumption that the Bali roadmap indeed opens up new horizons for international climate

¹ Parts of the overall analysis have been previously published. *H.E.Ott, W.Sterk & R. Watanabe*, The Bali roadmap: new horizons for global climate policy, *Climate Policy* 8 (2008) p. 91-95. The authors are grateful for the permission to use part of their analysis for this article.

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policy, but that the road ahead is full of pitfalls, devious terrain and that some of the possible routes may actually turn out to be cul-de-sacs.

One note of caution should be added: The climate regime has by now become rather complex, especially because there is a plethora of negotiation arenas created under the two treaties, the UNFCCC and the Kyoto Protocol. We will deal with the issues according to their substance and irrespective of the forum where they are negotiated, but will identify the respective fora in order to create clarity.

2. The Post-2012 Process on Future Commitments

The post-2012 negotiations have so far run along two tracks: first, at CMP 1 in Montreal the parties to the Kyoto Protocol had established an Ad-hoc Working Group on further commitments for Annex I-Parties pursuant to Article 3.9 of the Kyoto Protocol (AWG-KP). Second, the Parties to the FCCC in Montreal had launched a “dialogue” under the Framework Convention on Climate Change in the hope of integrating large developing countries and the United States, who have refused to ratify the Kyoto Protocol, in constructive discussions on the future of the climate regime. The “dialogue on long-term cooperative action to address climate change by enhancing implementation of the convention” was not supposed to prejudice “any future negotiations, commitments, process, framework or mandate under the Convention” and was “an open and non-binding exchange of views [...] and will not open to any negotiations leading to new commitments.”²

2.1. The Bali Action Plan

The “Bali Action Plan”, adopted in the final plenary, establishes an “Ad-hoc working group on Long-Term Cooperative Action under the Convention” (AWG-LCA).³ The informal “dialogue” has thus been transformed into a negotiating body with a clear mandate: AWG-LCA will work in parallel with the already existing working groups under the Kyoto Protocol, in order to strike a comprehensive deal by COP 15 / CMP 5 in Copenhagen (2009).⁴

The most contentious issues under this agenda item were the nature of the process to be established, the reference to the long term vision of the negotiations, and the commitments by the developing countries and industrialised countries on their

² Decision 1/CP.11, Dialogue on long-term cooperative action to address climate change by enhancing implementation of the Convention, FCCC/CP/2005/5/Add.1, 30 March 2006.

³ Decision-/CP.13, Bali Action Plan (Advance unedited version), para., 1.

⁴ Id., para. 2.

mitigation actions. The Bali Action Plan furthermore elaborates on other issues that had been identified before as the essential building blocks of a post-2012 agreement. The issues will be discussed in the respective sections, namely enhanced action on financial transfer to support mitigation and adaptation actions in developing countries (Section IV), enhanced action on technology development and transfer (Section V), and reducing emissions from deforestation (Section VI).

The nature of the new process was decided first. There were three basic options, namely (1) establishing an informal group like the “dialogue” established in Montreal, (2) initiating a formal negotiation process with the form of a new subsidiary body, i.e. a new AWG under the Convention, or (3) establishing a new AWG under the Convention and merging it with the AWG-KP in a single track. The majority of parties was in favour of the second option, and therefore Parties agreed to establish an AWG under the Convention and to formalise the negotiations under the UNFCCC but to still separate it from the negotiations under the AWG-KP. The AWG-LCA met for the first time from 31 March to 4 April 2008 in Bangkok and has scheduled three more meetings during 2008.

More difficult proved to be the reference to the long-term vision that should guide the negotiations. Whereas the EU had originally favoured the adoption of a long-term emission reduction target as the ultimate objective in the AWG-LCA mandate, this was opposed by other industrialised countries and by many developing countries. An escape route was provided by the proposal to refer to a range of emission scenarios presented in the Fourth Assessment Report of the IPCC Working Group III, where emission reductions in the range of below 1990 levels 25-40% by 2020 were considered necessary. The attempts were successful in AWG-KP (see below) but were fruitless in this agenda item. Due to resistance by the United States (US), Canada, Japan and Russia, the indicative range of mitigation commitments by industrialised countries in 2020 was not included in the text, but was relegated to a reference in a footnote.⁵ To rephrase it positively⁶, however, the Bali Action Plan in paragraph 1(a) nevertheless does open up negotiations on achieving the ultimate objective of the UNFCCC (Art. 2): the “...stabilization of greenhouse gas concentrations ... at a level that would prevent dangerous anthropogenic interference with the climate system...”.⁷

Regarding commitments, the decision differentiates between those to be negotiated for “developed country Parties” and those for “developing country Parties” (for the implications see below, Chapter VI). For developed country Parties, the decision calls for consideration of “Measurable, reportable and

⁵ This has been called the „historical footnote of climate policy“, cf. *U.E. Simonis*, Götter und Götzen. Bali – die historische Fußnote der Klimapolitik, Freitag 51, 21 Dec. 2008.

⁶ *J. Morgan*, Towards a new global climate deal. An analysis of agreements and politics of the Bali negotiations, E3G January 2008, available at www.e3g.org/images/uploads/Bali_Analysis_Morgan_080120.pdf.

⁷ *Supra* note 3, para. 1(a).

verifiable nationally appropriate mitigation commitments or actions, including quantified emission limitation and reduction objectives” while “ensuring the comparability of efforts among them.”⁸ It is true that this language falls back behind the language of the Berlin mandate in 1995 that led to the adoption of the Kyoto Protocol. On the other hand, it also represents a major deviation from the intention of most notably the US to replace Kyoto-style binding absolute targets by voluntary pledges.

For developing countries, the decision calls for “nationally appropriate mitigation actions by developing country Parties in the context of sustainable development, supported and enabled by technology, financing and capacity-building, in a measurable, reportable and verifiable manner.”⁹ This in the end proved to be the “make or break” formulation in the final hours of the conference. If developed countries actually deliver on this promise, the Bali Roadmap will open up new horizons and the chance to successfully tackle the climate problem.

2.2. Ad Hoc Working Group on Further Commitments for Annex I Parties under the Kyoto Protocol (AWG-KP)

The AWG-KP negotiations made steady progress in Bali. The negotiation atmosphere was very different from CMP 2 in Nairobi. There, the developing countries had insisted that industrialised countries take the lead by determining their further commitments in the AWG by 2008 before negotiating stronger emission reduction activities for developing countries. By contrast, the industrialised countries had attempted to put the negotiations on Articles 3.9 (i.e. commitments to be taken by industrialised countries) and the Article 9 review of the Protocol (see below) into one package with the intention to establish a linkage between the negotiations on the future commitments for themselves and negotiations on stronger participation by developing countries. In the end, Parties had agreed on a work programme but without specifying the deadline and the relationship between the AWG-KP and other post-2012 related items.¹⁰

Over the course of 2007, industrialised and developing countries started to overcome their differences. Already at the third AWG meeting held in May in Bonn, compromise was reached to develop a timetable to complete the AWG’s work so as to avoid a gap between the first and second commitment periods of the Kyoto Protocol.¹¹ At the fourth AWG meeting at Vienna in August, the G77 and China resisted language referring to the ultimate objective of Article 2 of the UNFCCC. However, they agreed on referring to the newly published fourth report of the IPCC (AR4) Working Group III (WG III) that indicates that global

⁸ *Supra* note 3, para. 1(b)

⁹ *Supra* note 3, para. 1(b)

¹⁰ Further commitments for Annex I Parties and Programme of Work, Draft Conclusions, FCCC/KP/AWG/2006/L.4, 14 December 2006

¹¹ Analysis of mitigation potentials and programme of work. Draft conclusions proposed by the Chair, FCCC/KP/AWG/2007/L.2, 18 May 2007, para. 10.

emissions of GHGs need to peak within the next 10 to 15 years and be reduced to very low levels, well below half of the level in 2000, by the middle of the twenty-first century, in order to stabilise their concentration in the atmospheres at the lowest levels assessed by the IPCC to date in its scenarios¹². In return, industrialised countries agreed on inserting language that the AR4 WG III report also indicates that achieving the lowest stabilisation level assessed by the IPCC to date would require Annex I Parties as a group to reduce emissions in the range of 25-40% below 1990 levels by 2020.¹³

Against this positive backdrop, the negotiations in Bali focussed on the 2008 and 2009 work programme. Besides the timeline and the relationship with other post 2012 related issues, namely Article 9 and the Bali Action Plan, reference to the IPCC AR4 and an indicative range of the mitigation targets of Annex I Parties that were already included in the conclusions of the Vienna meeting was brought on the table again.

Regarding the linkage between the AWG and other post-2012 processes, South Africa on behalf of the G77 and China, acknowledged the need to avoid duplicative work but opposed any formal links to other post-2012 processes. Reflecting this view, Parties agreed that the AWG-KP “will coordinate its work with, and draw upon relevant results achieved and work under way in, other bodies and processes under the Convention, especially its Kyoto Protocol, with a view to avoiding duplication”¹⁴ and requested the Secretariat to “schedule the AWG-KP’s meetings to the greatest extent possible, in conjunction with meetings and activities of other relevant processes under the Convention and its Kyoto Protocol, with a view to ensuring the efficient use of resources”.¹⁵

Regarding the timeline, taking a side glance at the negotiations on the Bali Action Plan Parties agreed that the AWG aims to forward relevant decisions on Annex I Future Commitments for adoption by CMP5 to be held in 2009,¹⁶ same timing when the AWG-LCA will complete its work.¹⁷

On the reference to the IPCC AR4 and an indicative range of mitigation commitments by Annex I Parties, the draft conclusions distributed in the final plenary still contained two options: the first, supported by Canada and the Russian Federation, referred only to the relevant paragraph numbers in the report of the Vienna session.¹⁸ The second option, supported by the EU, New Zealand,

¹² Analysis of mitigation potentials and identification of ranges of emission reduction objectives of Annex I Parties, FCCC/KP/AWG/2007/L. 4, 31 August 2007, para. 6

¹³ Id., para. 7.

¹⁴ Review of work programme, methods of work and schedule of future sessions Draft conclusions proposed by the Chair, FCCC/AWG/2007/L.6/Rev.1, 13 December 2007, para. 2

¹⁵ Id., para. 10.

¹⁶ Id., para. 9.

¹⁷ *Supra* note 4.

¹⁸ Report of the Ad Hoc Working Group on Further Commitments for Annex I Parties under the Kyoto Protocol on the first part of its fourth session, FCCC/KP/AWG/2007/L.3, 30 August 2007.

Switzerland, and developing countries, contained the same language as in the conclusions of the Vienna session.¹⁹ With slight modifications by the Russian Federation with the assistance of the EU and South Africa, Parties finally agreed on the second option, i.e. a full reference to the need for Annex I Parties as a group to reduce emissions in the range of 25-40% below 1990 levels by 2020.

2.3. Article 9 Review of the Kyoto Protocol

Article 9 of the Kyoto Protocol prescribes a general review of the adequacy of the Protocol at regular intervals, with the first review starting at CMP 2. Along with the AWG-KP, the review had been one of the most contentious issues in Nairobi. Delegates finally agreed to conclude a brief first review at CMP 2 and to conduct the second review at CMP 4 in 2008.

The scope and content of the second review were considered at CMP 3 in Bali, again with diverging positions of industrialised and developing countries. Developing countries²⁰ stated that the Kyoto Protocol was still a relatively new instrument, having been in force for two years only, and that the second review should therefore aim at strengthening its implementation.²¹ By contrast, industrialised countries²² argued that the Protocol was in fact already 10 years old and the available knowledge now far greater. They proposed to undertake a thorough review of all aspects of the Protocol, highlighting especially its effectiveness to achieve the ultimate objective of the Convention. Parties agreed that the review “shall aim to enhance the implementation of the Protocol and further elaborate upon a number of its elements, in particular adaptation.”²³

Parties also agreed that the review preparations shall take into account results of other relevant activities in the post-2012 process in order to avoid duplicated work.²⁴ The review itself will be based on the best available science, noting in particular the IPCC’s Fourth Assessment Report.²⁵ Regarding the process to prepare for the second review at CMP 4, the secretariat will organise a workshop and issue a progress report by October 2008.²⁶ The CMP also invites Parties for submission of their views on several outstanding issues, including extending the

¹⁹ *Supra* note 12 and 13.

²⁰ Most notably Pakistan for the G77 and China, seconded in particular by Saudi Arabia and India

²¹ in particular of Annex I commitments in the areas of mitigation, adaptation, funding and technology transfer, as well as the CDM and non-market sources of funding.

²² the European Union, New Zealand, Canada, Japan, Australia and Norway.

²³ Decision -/CMP.3 Scope and content of the second review of the Kyoto Protocol pursuant to its Article 9 (Advance unedited version), para. 1

²⁴ *Id.*, para. 4.

²⁵ *Id.*, para. 2

²⁶ *Id.*, para. 8

share of proceeds to JI and emissions trading to Adaptation Fund.²⁷ The agreed text reiterates as in the CMP 2 decision that the review will not lead to new commitments for any party.²⁸ Considering that such a preparatory process had not been undertaken before the first review at CMP 2, however, it is expected that the second review will provide a basis for the negotiations on other post 2012 related negotiations to be concluded in 2009.

3. Flexible Mechanisms

While the Clean Development Mechanism continues to grow rapidly, in 2007 the voices doubting the environmental integrity of the CDM have grown considerably. Several studies and news reports had claimed that the CDM approval process was failing to effectively screen out projects that are actually not additional but would also have taken place without the CDM.²⁹ In Bali, concerns about the effectiveness of the project screening process and the workload of the CDM Executive Board (EB) prompted Switzerland to propose to undertake an assessment of the CDM. Apart from the quality of projects, Switzerland also wanted to identify and remove bottlenecks in the CDM process and improve transparency.

The Swiss proposal was at first welcomed by many Parties. However, over the course of the negotiations it became apparent that Parties had rather diverging views of which content and direction such an assessment should take. It was therefore dropped in the end. The CMP requested the EB to finalise the ongoing work on a Validation and Verification Manual (VVM) as its highest priority. It is also to identify and implement further means to promote the consistency and quality of the validation and verification process.³⁰ In addition, while the Swiss proposal was not adopted, the implementation and effectiveness of the CDM will also be taken up in the framework of the general Article 9 review of the Kyoto Protocol (see above).

The CMP also had a full agenda left over from previous sessions as regards controversial project types, namely projects that reduce the unsustainable use of biomass, Carbon Capture and Storage (CCS), HFC-23 and small-scale

²⁷ Ukraine supported by the Russian Federation expressed their concerns about the expansion after the decision was adopted.

²⁸ Decision -/CMP.3, para. 3

²⁹ E.g. *A. Michaelowa & P. Purohit*, Additionality determination of Indian CDM projects, Can Indian CDM project developers outwit the CDM Executive Board? 2007; *L. Schneider*, Is the CDM fulfilling its environmental and sustainable development objective? An evaluation of the CDM and options for improvement, 2007.

³⁰ Decision -/CMP.3, Further guidance relating to the clean development mechanism, FCCC/KP/CMP/2007/L.3, 11 December, para. 15.

afforestation and reforestation.³¹ Progress on these issues was mixed. After years of deliberation at the CDM EB and the CMP, CMP 3 finally gave the go-ahead for projects reducing the unsustainable use of biomass.³² The CMP also decided to raise the threshold that defines small-scale afforestation and reforestation projects from 8,000 t CO₂ removal per year to 16,000 t. Through the increase of the threshold, more projects will be able to use the simplified rules that apply to small-scale projects.³³ By contrast, discussion on CCS and HFC-23 projects once again did not make much progress and were postponed to SB 28 in June.³⁴

In contrast to the full CDM agenda, the Joint Implementation (JI) negotiations were again very quiet. The JI Supervisory Committee (JISC) had made the mechanism operational in 2006 and is currently mainly working on accrediting Independent Entities.

4. Financial Mechanisms

4.1. Fourth review of the Financial Mechanisms

Almost at every COP, developing countries have called for an increased transfer of financial resources from industrialised countries for engaging in mitigation and adaptation actions. The Convention and the Protocol indeed mandate Annex II parties³⁵ to provide financial resources to support developing countries in national communications development, capacity-building, development and transfer of technologies, support for adaptation, support for economic diversification, support for mitigation, and so on (Articles 4.3 of the Convention, Article 11 of the Protocol). The demand of developing countries for financial resources has never been met, however.

³¹ For a more detailed explanation of these issues, see *W. Sterk, H.E. Ott, R. Watanabe & B. Wittneben*, The Nairobi Climate Change Summit (COP 12 – MOP2): Taking a Deep Breath before Negotiating Post-2012 Targets? JEEPL 2007 (2), p. 139, 145 et seq.

³² Decision -/CMP.3, Further guidance relating to the clean development mechanism, FCCC/KP/CMP/2007/L.3, 11 December, para. 24.

³³ Decision -/CMP.3, Implications of possible changes to the limit for small-scale afforestation and reforestation clean development mechanism project activities, FCCC/SBSTA/2007/L.18/Add.1, 10 December.

³⁴ Carbon dioxide capture and storage in geological formations as clean development mechanism project activities, Draft conclusions proposed by the Chair, FCCC/SBSTA/2007/L.9, 10 December 2007, Methodological issues under the Kyoto Protocol, Implications of the establishment of new hydrochlorofluorocarbon-22 (HCFC-22) facilities seeking to obtain certified emission reductions for the destruction of hydrofluorocarbon-23 (HFC-23), Draft conclusions proposed by the Chair, FCCC/SBSTA/2007/L.13, 8 December 2007.

³⁵ Annex II Parties is Annex I industrialised Parties minus Economy in Transition countries.

The COP 13 / SB 27 continued to address the above issues by starting the fourth review of the financial mechanisms and receiving the report of, and negotiating on guidance to, the Global Environmental Facility (GEF).

The lack of sufficient resources was in particular highlighted in this session due to publication of a paper developed by the Secretariat, which reviews existing, planned and needed investment and financial flows to address climate change.³⁶ The paper pointed out the necessity to increase investment and financial flows to 379.5 billion \$ for mitigation activities and several tens of billions for adaptation in 2030.³⁷ Considering that the GEF trust fund currently allocates only 1 billion US \$ to climate change under its fourth replenishment from 2006 to 2010,³⁸ the necessity for developing ways to scale up public and private financial flows is obvious. Parties agreed to adopt the additional guidelines for the fourth review and to submit their views on a series of reports and papers produced by the UNFCCC Secretariat and the GEF Secretariat.³⁹ The SBI will consider the submissions by parties at its 28th session and recommend a draft decision for adoption by COP 14.⁴⁰

Another issue that has received particular attention is the complexity of operation of the financial mechanisms. First, G77 and China expressed their concerns about a communication gap between the GEF and the parties, which prevented the GEF from grasping the needs of developing countries. Addressing this concern, the adopted decision requests the GEF to continuously enhance its country dialogues and to ensure the transparency and timeliness of its communications with parties on changes undertaken in the GEF reform agenda.⁴¹ Second, G77 and China criticised the complexity resulting from the necessity of calculating “incremental cost⁴²” and claimed that it was an obstacle to timely access to GEF funds. The

³⁶ UNFCCC, Background paper on analysis of existing and planned investment and financial flows relevant to the development of effective and appropriate international response to climate change, 2007, http://unfccc.int/files/cooperation_and_support/financial_mechanism/application/pdf/background_paper.pdf

³⁷ Id. at 91, 125.

³⁸ GEF, Global Environmental Facility Trust Fund Replenishment: Revised Draft Resolution for approval by the World Bank Executive Directors. GEF/R. 4/34 May 24, 2006. p.3.

³⁹ Draft decision-/CP.13, Fourth review of the financial mechanism (Advance unedited version), para. 2. The technical paper on the review of the experience of international funds, multilateral financial institutions and other sources of funding relevant to the current and future investment and financial needs of developing countries, the report prepared by the secretariat, in collaboration with the Global Environment Facility secretariat, on the assessment of the funding necessary to assist developing countries, in accordance with the guidance provided by the Conference of the Parties, in meeting their commitments under the Convention cover the next Global Environment Facility replenishment cycle, taking into account paragraph 1(a)-(d) of the annex to the memorandum of understanding between the Conference of the Parties and the Global Environment Facility Council (decision 12/CP.3), and the report on the analysis of existing and potential investment and financial flows relevant to the development of an effective and appropriate international response to climate change.

⁴⁰ Id., para. 4.

⁴¹ Draft Decision-/CP.13 Additional guidance to the Global Environment Facility (Advance unedited version), para. 1.(a)

⁴² The GEF has defined incremental costs as the difference between the full costs of the measures taken and the sum of the costs of the least expensive way to deliver an equivalent economic benefit plus the short-

agreed decision requests the GEF to simplify and streamline the application of the incremental cost principle, and to improve access to GEF funds for those countries that are particularly vulnerable to the adverse effects of climate change.⁴³

4.2. Adaptation Fund

The Adaptation Fund (AF) is to finance concrete adaptation projects and programmes in developing countries that are particularly vulnerable to the impacts of climate change. It will be funded from a 2% levy on the issuance of Certified Emission Reductions under the CDM. However, operationalisation of the AF had for years been caught up in a wrangle over its institutional arrangements.

The industrialised countries have always preferred the GEF to manage the fund. They maintained that choosing the GEF would ensure that project activities would be better coordinated with the other financial mechanisms under the Convention whose operational entity is the GEF. By contrast, developing countries questioned the legitimacy of the GEF, where donor governments play a dominant role⁴⁴, to handle this fund, as most of the resources for the AF will probably not come from donor countries but from the CDM, i.e. mitigation projects in developing countries. LDCs and Small Island Developing States (SIDS) further feared that certain rules of the GEF's current mandate would lead to the AF favouring countries that already receive the bulk of foreign direct investment or Official Development Assistance (ODA) flowing to the South.

In Bali, Parties finally agreed on the institutional arrangements of the AF: they decided to establish the Adaptation Fund Board (AFB) as an operating entity consisting of 16 members, with two representatives from each of the five UN regional groups, one from SIDS, one from the Least Developed Countries (LDCs), two others from Annex I parties as well as two representatives of non-Annex I parties; thus, establishing a majority from developing countries. The AFB shall "supervise and manage" the Adaptation Fund under the authority and guidance of and be fully accountable to the CMP.⁴⁵ The Board's functions comprise, inter alia, recommending strategic priorities and policies to the CMP, deciding on projects and developing criteria to ensure that entities applying for funding have the necessary financial and administrative capacity. The Board is to

term benefits to the local economy (baseline) that would result from the proposed measure. GEF, Implementing the FCCC, Incremental Costs and the Role of the GEF. Working Paper 4, 1993, p. 31.

⁴³ *Supra* note 39, para. 1 (c)

⁴⁴ They were particularly concerned about the voting structure of the GEF Council where a double majority is required, i.e. an affirmative vote must represent both a 60% majority of the total number of participants and a 60% majority of the total contributions.

⁴⁵ Decision -/CMP.3, Adaptation Fund (Advance unedited version), paras. 3 and 4.

be served by the GEF as a secretariat and the World Bank as a trustee on an interim basis.⁴⁶ These two interim institutional arrangements are to be reviewed at CMP 6. In case that there is revision, the decision calls for the CMP to ensure that ongoing project activities are not jeopardised.

5. Technology Transfer

According to Article 4.5 of the UNFCCC and Article 10(c) of the Kyoto Protocol, Annex II industrialised countries are committed to promote, facilitate and finance the transfer of technology in order to speed up the diffusion of emission reduction and adaptation technology. Recent negotiations have focused on the future mandate of the Expert Group on Technology Transfer (EGTT), which is undertaking analytical work. The mandate of the EGTT expired at COP 12 in Nairobi. In Nairobi, developing countries had strongly called for replacing it with a new and stronger body, a so-called Technology Transfer and Development Board, and also for establishing a Multilateral Technology Acquisition Fund to buy intellectual property rights. These proposals were opposed by industrialised countries who instead argued for continuing and strengthening the EGTT. Parties were unable to bridge this division and finally decided to extend the mandate of EGTT for one year and continue discussions.⁴⁷

Originally set in the Subsidiary Body for Scientific and Technological Advice (SBSTA), G77 and China also introduced the issue of Technology Transfer into the Subsidiary Body for Implementation (SBI) during the first COP plenary in Bali, a move widely unnoticed by other country delegates. Subsequently, two separate contact groups under SBSTA and SBI were established to address the issue. G77 and China proposed new text for a draft decision under SBI, mainly revolving around the implementation of a new and additional multilateral technology fund. This was greeted with some reservation by industrialised countries.

After informal consultations over the weekend, no agreement was reached. The main conflict between G77 and China and the industrialised countries revolved around the scope of a new mechanism regarding Technology Transfer. Whereas the developing countries strongly supported a fund, the industrialised countries were in favour of a program or facility on technology transfer. In the end, the differences were narrowed down to a few words; nevertheless, no agreement

⁴⁶ Id., paras. 19 and 23.

⁴⁷ Decision 5/CP.12, Development and transfer of technologies, para. 1, in: Report of the Conference of the Parties on its twelfth session, held at Nairobi from 6 to 17 November 2006, Addendum, FCCC/CP/2006/5/Add. 1, 26 January 2007.

could be reached. The SBI therefore concluded to further negotiate the issue at SB 28 in June.

Parallel negotiations under SBSTA did not come to a final decision either. Developing countries noted the postponement of the SBI and SBSTA negotiations with deep concern, emphasizing that technology transfer in their eyes was one of the major issues at this COP and could well be a stumbling stone for the whole post-2012 negotiation process.

Given the importance of the issue for the post-2012 negotiations, COP president Witoelar decided to reopen the issue in the COP plenary. After lengthy negotiations, the Parties agreed on adopting the COP decision regarding SBSTA to extend the mandate of the EGTT another five years⁴⁸; they further adopted a set of actions.⁴⁹ The SBI decision states, inter alia, that the EGTT shall recommend actions to both SBs. Funding priorities are identified and a request is made to the GEF to devise a Strategic Programme to increase investment in technology transfer.⁵⁰ The COP in its conclusions requested the Secretariat to devise a regional training programme with successive workshops in 2008 and 2009, an adaptation technology meeting and a prompt meeting of the EGTT.⁵¹

6. Deforestation

Deforestation accounts for about a fifth of all global greenhouse gas emissions. However, neither the UNFCCC nor the Kyoto Protocol had so far addressed this issue in an appropriate manner. At COP 11 in Montreal, Papua New Guinea, Costa Rica and eight other Parties called for the COP to consider allowing carbon credits for deforestation efforts. In 2006, Brazil tabled a competing proposal according to which countries would not get credits for reducing deforestation but payments from an international fund supported by donor country contributions.

In the meantime labelled ‘Reducing Emissions from Deforestation and Forest Degradation in Developing Countries’ (REDD), in Bali the agenda item saw heated discussions on the form of possible incentives, on how to refer to pilot projects, and on the question whether forest conservation should be included in the decision. The latter was advocated mainly by India. Including forest conservation in REDD would have meant rewarding Parties for efforts to stop

⁴⁸ Decision -/CP.13, Development and transfer of technologies under the Subsidiary Body for Scientific and Technological Advice, (Advance unedited version), para. 3.

⁴⁹ Id., para.,2.

⁵⁰ Decision /CP.13, Development and transfer of technologies under the Subsidiary Body for Implementation (Advance unedited version), para. 3.

⁵¹ Development and transfer of technologies under the Subsidiary Body for Scientific and Technological Advice, Draft Conclusions proposed by the President. FCCC/CP/2007/L.3, 13 December 2007, paras. 2a and d.

deforestation in the past, thus probably taking away resources from future reduction efforts. Parties finally reached a consensus on this issue with India accepting a compromise text, leaving the conservation issue for “further consideration”. Another controversial issue was how to refer to deforestation in the context of long-term cooperative action under the Convention. The US tried to link the REDD decision to the broader term “land use” in general. This would have taken away the focus from current deforestation and opened up the mechanism to, for example, issues of forestry in Annex I countries. The US, in contrast to India, insisted on its demand until the very last minute – it was only in the final plenary session on Saturday that the US finally agreed to leave out this reference the developing countries had opposed so strongly.

The final decision on REDD encourages parties to undertake “demonstration activities” to address the drivers of deforestation, supported by “indicative guidance” provided in an annex to the decision.⁵² Moreover, the decision establishes a 2-years-process under SBSTA on methodological issues related to policy approaches and positive incentives.⁵³ Whether incentives to reduce deforestation should include direct financing for REDD activities or issuing emission credits is left open in the decision: this question is to be dealt with in the new AWG-LCA.

The REDD decision is an important step forward, as developing countries for the first time agreed to contribute to reducing emissions and protecting forests. Several developed countries announced or had announced even prior to the decision substantial contributions for supporting the demonstration activities. The Norwegian Government, for example, had granted US \$ 545 million per year in the period 2008-2012 as early as December 9, thus stressing the developed countries’ will to support the tropical forest countries in their efforts.

7. Conclusions and Ways Forward

The assumption posited in the introduction appears to be confirmed after some examination of the conference results - that the Bali Conference was one of the more successful conferences in the history of the climate negotiations and may even have opened up new horizons. The Bali Roadmap provides a real chance that the pre-Copenhagen negotiations will result in an effective and workable post-2012 agreement. After 17 years of conflicts since the initiation of negotiations by the International Negotiation Committee (INC), the Parties finally agreed to negotiate an agreement with the understanding that all major emitters will take on some kind of mitigation activities. The Bali conference also saw a

⁵² Decision -/CP.13, Reducing emissions from deforestation in developing countries: approaches to stimulate action (Advance unedited version), paras. 3 and 4.

⁵³ Id., para. 7

significant shift in the battle lines, a rearrangement of positions and alliances that might well announce a decisive new era in global climate policy.

One of the main factors to bring about this success was a change of strategy by developing countries. Under the traditional strategy, as evidenced in the AWG-KP and Article 9 negotiations up to Nairobi, developing countries had insisted that Annex I-Parties should take the lead. In Bali, developing countries showed an unprecedented willingness to take up an active role in the fight against climate change. One after the other, the large emerging economies took the floor to announce that they were willing to do more, to contribute their fair share to the fight against climate change. Bali thus effectively annihilated the main excuse of the industrialised countries for not taking further commitments, namely that developing countries are unwilling to make contributions.

The change of strategy was supported by the emergence of new actors on the climate stage. The Bali conference saw many new faces from finance and technology areas and, most notably, from the social justice movements. This has two reasons: first of all, social activists all over the world have realised that climate change threatens social progress and fundamentally interferes with peoples' rights all over the planet. And, second, many of the solutions affect the South and poor people in the South especially, like the hype for agrofuels that is leading to widespread deforestation in Indonesia, Amazonia and elsewhere. The CDM has taken proportions where it is having a measurable impact in developing countries - and much of it not in a positive direction. And the sheer volume of the financial resources required - in the range of hundreds of billion Euros per year - will dwarf the traditional flows in official development aid. Bali thus saw the coming-out of the social justice movement on the issue of climate change. Organisations like Oxfam, Christian Aid, the Third World Network and Focus on the Global South are taking the issue of climate change very seriously. Their engagement has not only changed the content of the negotiations because of their emphasis on social justice and equity, it has also increased the confidence of developing countries.

This new confidence has led to a Bali Action Plan that provides developing countries with a clearly worded anchor for financial and technological support, strengthening the formulations already embodied in the UNFCCC (Articles 4.3 and 4.5). Any substantive commitments on their part will have to be matched by "measurable, reportable and verifiable" support from developed countries. Moving the words "measurable, reportable and verifiable" away from developing countries' mitigation actions to the technological and financial support testifies to the enhanced importance of the emerging economies in the climate negotiations. It should be noted, however, that also the mitigation actions themselves have to be

“measurable, reportable and verifiable” - this was clarified by an intervention of South Africa in the final hours of the negotiations.⁵⁴

The decision furthermore indicates a willingness on the part of developing countries to engage in differentiation, because it moves away from the historical division between “Annex I” and “non-Annex I” countries. There has been an increasing differentiation within the G77 where booming economies in Asia and Latin America have little in common with many least developed countries. Using the terms “developed country Parties” and “developing country Parties”, this decision opens the door for new combinations and grades of commitments for developing countries. The post-2012 negotiations can thus take into account the different stages of economic development, emissions and mitigation potential in which developing countries find themselves.⁵⁵ Developing appropriate indicators and ways for differentiation between developing countries will be one of the most difficult tasks of the two years ahead.

It will be equally difficult and important to develop mechanisms for financing mitigation in developing countries and for technology cooperation. Initially considered to be quite a low-key part of the deal by the industrialised countries, G77 and China managed to raise these issues to become one of the major building blocks of the Bali package. The coming negotiations on technology cooperation and financial mechanisms must address these issues in order to fully meet the demands of developing countries and enhance the chances for a post-2012 agreement. Of vital importance are: simplification of the financial mechanisms’ operation, the establishment of new mechanisms of technology transfer, and scaling up of funding. The EU, which at first seemed to be highly reluctant to agree to yet another funding mechanism, in the end merged its proposal with G77 and China’s to a comprehensive package that will now have to prove itself in the negotiation process in the next two years.

Especially crucial for the future South-North relationship (and therefore the fate of the climate negotiations) will be the smooth operation of the Adaptation Fund. The agreement on this fund was the last outstanding item in order to completely implement the Kyoto Protocol and the fund’s adoption came right on time, given that the Protocol’s first commitment period was to begin only two weeks later. However, the several hundred millions of dollars the fund is expected to generate

⁵⁴ See also *B. Mueller*, Bali 2007: On the road again! Impressions from the Thirteenth UN Climate Change Conference; available at www.oxfordclimatepolicy.org/publications/mueller.html.

⁵⁵ See e.g. *Ott, H.E., Winkler, H., Brouns, B., Kartha, S., Mace, M.J., Huq, S., Kameyama, Y., Sari, A.P., Pan, J., Sokona, Y., Bhandari, P.M., Kassenberg, A., La Rovere, E.L. & Rahman, A.*, South-North Dialogue on Equity in the Greenhouse. A proposal for an adequate and equitable global climate agreement; GTZ Climate Protection Programme, May 2004, available at http://www.wupperinst.org/uploads/tx_wiprojekt/1085_proposal.pdf; see also the concept of Greenhouse Development Rights by Ecoequity at www.ecoequity.org/docs/TheGDRsFramework.pdf.

can only be a first start for adaptation funding in view of the several billions of dollars estimated to be necessary for adaptation.⁵⁶

The CDM is also an important cornerstone in South-North relations. It has already mobilised significantly more funding and investments than the financial mechanisms, but there are serious concerns about the current structure and functioning of the CDM. A growing number of studies and reports indicate that a large number of projects is actually not additional, significantly impairing the environmental effectiveness of the Kyoto Protocol. And even at best the CDM will only off-set Annex I emissions. The Article 9 review should therefore take a close look at the functioning of the CDM. First, a post-2012 CDM should move beyond offsetting and yield real net reductions in global emissions as well as real benefits for sustainable development. Second, Parties should explore to shift from the project-by-project approach to more top-down approaches, variously discussed as policy-based CDM, sectoral CDM, or no-lose targets. Sectoral approaches to the CDM also entail some new risks, though, in particular as regards the feasibility of adequately quantifying emissions and reductions at the sectoral level.⁵⁷ If the project-based CDM is retained instead of or alongside sectoral approaches, additionality testing would have to be severely strengthened.

The above explanation illustrates that there were a number of positive aspects but that the challenges on the bumpy road from Bali to Copenhagen are enormous. Quite obvious is the enormous workload - from negotiating deepened commitments for those countries that are already bound under the Kyoto Protocol, new commitments for developing countries (including methods for differentiation), integrating the US with new commitments, adaptation, deforestation, financial mechanisms, technology cooperation, transfer mechanisms for mitigation and adaptation to improving the market mechanisms that are still in the first stages of their existence. All these processes have to be kept under surveillance, kept apart, streamlined where necessary and – in the end – all those different threads have to be combined into one gigantic package deal.

As if the issues themselves were not complex enough already, these negotiations will take place on six different stages: the COP and the CMP of convention and protocol, the two subsidiary bodies and the ad-hoc working groups under the convention and the protocol. The AWG-LCA initiated by the Bali Action Plan has scheduled four sessions for 2008, the first session already took place in April 2008. The Ad Hoc Working Group on Further Commitments for Annex I Parties under the Kyoto Protocol (AWG-KP) according to its work plan adopted in Bali will also hold four meetings in 2008 and 2009 respectively. If the utter exhaustion of even several “veterans” of the diplomatic circus during the final hours of the

⁵⁶ *Supra* note 37

⁵⁷ W. Sterk & B. Wittneben, Enhancing the clean development mechanism through sectoral approaches: definitions, applications and ways forward, IEA 2006 (3), p. 271.

Bali conference is not to become a common sight in these negotiations, the participants will have to find ways of accommodating their capacities to these demands.

Another challenge that the negotiators will not be able to influence at all is the elections in the United States. It is far from certain that the US after the elections will play the role that its economic and political power seems to dictate. A new president may be able to enact new legislation against global warming, however, ratification of a post-2012 agreement by Congress may prove to be impossible. If that is the case, international law provides an alternative: the next US government could establish a strong national climate programme in the US, including ambitious reduction targets, and declare unilaterally that the US considers itself bound to this target by international law. There is a small chance that such a binding international declaration under international law could politically satisfy the rest of the world.

The most difficult diplomatic task, however, is one that every government has an influence on: forging an alliance between North and South will be the key to successful negotiations. This alliance must support the emerging economies on mitigation and the poorer countries on adaptation. There are convincing motives for such an alliance, because the threat of a destabilization of the climate system can only be solved by a truly global effort: fifty percent of emissions stem from Annex I and fifty percent from non-Annex I countries, rising rapidly. Each side thus has the potential to lead the world into climate chaos if it continues a course of business-as-usual – some new form of “mutually assured destruction”, as the nuclear confrontation was called in the cold war. Substantial contributions from the South will require equally substantial financial and non-financial support from the North. The Bali coalition between developing countries and the EU opens up new horizons and provides some reason for optimism that such an alliance is possible.

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